IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 344 of 1983

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHCHANDRA G DHRUVE

Versus

TULSIDAS CHAMPSHI

Appearance:

MR JR NANAVATI for Petitioner

MR VIJAY H PATEL for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 13/06/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original plaintiff-landlord, who had sued the respondent-tenant for a decree of eviction under section 13(1)(g) of the said Act on the ground of reasonable and bonafide requirement of

the landlord.

2. The trial court, after recording evidence and on appreciation of the same, dismissed the suit by holding that the landlord had failed to establish his reasonable and bonafide requirement and also by recording a finding under section 13(2) of the said Act that the tenant would suffer greater hardship if the decree were passed than the hardship suffered by the landlord if the decree were refused.

3. Aggrieved by the dismissal of the suit the landlord preferred an appeal, which was also dismissed. Hence the present revision.

4. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

5. Only the salient features required to be noted. The case put up by the plaintiff was that the suit premises were reasonably and bonafide required for personal use by himself and his two practicing advocate sons. In fact it was the plaintiff's case that he himself started practice in revenue matters after retiring from the Revenue Department. The plaintiff's case was that at present he sits in the passage portion owned by him, but the same cannot be said to be an office, but is merely a passage for the purpose of going to the inner portion of the house. Therefore, the suit premises which are a shop having two doors on the road are required by him and his two advocate sons for pursuit of the profession of law.

6. The tenant has strongly defended the case put up by the plaintiff-landlord and in his written statement at Exh.20, the tenant has seriously challenged the bonafides of the landlord as also the reasonableness of the so-called requirement of the landlord, and has further emphasised that greater hardship would be caused to him in case a decree of eviction is passed than the hardship which would be suffered by the landlord in case the decree is refused. The lower appellate court has extensively dealt with the evidentiary material on record and has also re-examined the findings of fact recorded by the trial court. The lower appellate court has found that the deposition of the plaintiff is grossly exaggerated and not in consonance with the documentary evidence on record, without in terms holding that the plaintiff is a liar. The plaintiff's case in the plaint as also in his oral deposition is that he had retired from the government service in the Revenue Department somewhere in the year 1975 and has obtained his Sanad in December 1975, and that he now works as a consulting lawyer for revenue matters, etc. However, during the course of his deposition he has admitted that although he obtained his Sanad somewhere in the year 1975, he has never appeared in any court of law, neither has he appeared in any criminal or revenue proceedings. When he was cross-examined on the aspect of consultation work which the plaintiff claimed to do, he then claimed that he advises clients and needy people free of charge. The appellate court, therefore, was justified in holding that although the plaintiff claims to be a consulting lawyer, as a matter of fact he is not in actual practice at all, whether consultative or otherwise.

7. A similar finding is recorded in respect of the plaintiff's elder son Harendra, who the plaintiff claims was working with him for revenue matters. There is absolutely no evidence on record regarding the so-called legal practice by elder son Harendra. The plaintiff has admitted that Harendra has never appeared in any court whether civil court, criminal court or even a revenue court. These are the admissions of the plaintiff in respect of his elder son Harendra. In fact Harendra has not deposed at all. The courts below were, therefore, justified in concluding that the elder son Harendra is also not in active practice.

8. It would, therefore, appear that Nilesh, the younger son of the plaintiff is the only person who is in the legal profession, and it has been found by both the courts below that he already has an established office in the very same premises although the premises may be

somewhat cramped. The evidence on record as found by both the courts below clearly establishes that this office is decorated, has bookshelves with books including a sofa set, and except that there is no table, is otherwise functioning as a lawyer's office. The office admittedly has three chairs, one teapoy and one sofa set which is capable of easily accommodating eight persons.

9. It is further in evidence and found by the two courts below that the plaintiff has virtually lied by denying the existence of another room behind the office room occupied by Nilesh. The sketch or blue-print at Exh.80 prepared by the District Surveyor Harji Devji Chauhan (Exh.79) clearly establishes that an open space admeasuring about 10 x 6 feet is in actual possession of the plaintiff, which is not currently put to any use. If the measurement of this room is 10 x 6 feet, it cannot be said to be a mere passage to the rear portion of the residential accommodation. This is also the admission of the plaintiff's witness Shri Chauhan (Exh.79).

10. The photographs produced on record at Exh.64 and 65 clearly establish that the area occupied by Nilesh and utilised by him as an office cannot be said to be a Chhal, but in fact a fullfledged working office, and that he has got the same decorated to suit his purpose.

11. It is, therefore, futile on the part of the learned counsel for the landlord to submit in a revision under section 29(2) of the Bombay Rent Act that this court should upset the concurrent findings of fact recorded by the two courts below, as discussed hereinabove. I regret that I am not in a position to do so and I am required to confirm the same.

12. It is also pertinent to note that even if it be assumed for the sake of argument that the landlord has succeeded in establishing his reasonable and bonafide requirement, he has failed in establishing on a question of fact, greater hardship to himself within the meaning of section 13(2) of the Bombay Rent Act. In this context it must be noted that the question of greater hardship was hotly discussed before the trial court, which found that the tenant would suffer greater hardship if a decree for eviction were passed. When the landlord preferred an appeal from the trial court decree, no doubt a ground was taken in the appeal memo that the finding as to greater hardship is incorrect and requires to be set aside. However, it is obvious on the face of the appellate judgement that the question of greater hardship was not argued by the landlord in appeal. It is for this reason

that the lower appellate court has not recorded any independent finding on the question of greater hardship within the meaning of section 13(2) of the Bombay Rent act. For this reason learned counsel for the landlord suggests that the case be remanded back to the lower appellate court for a finding on this issue. I am not inclined to accept this suggestion for two reasons. Firstly, the provisions of remand are not intended to fill in the lacuna which may have been left in the handling of a matter by a party, unless the interests of justice make it essential. I do not regard this to be an essential and/or crucial aspect of the matter also because no principle analogous to the principles laid down in Order 41, Rule 23, 23-A and/or 25 can be invoked for the purpose of deciding the present matter. Secondly, no order of remand would be justified when this court has confirmed the findings of fact recorded by the two lower courts viz. that the landlord has failed to establish his reasonable and bonafide requirements. Thus, the question of relative hardship is at best an academic issue.

13. In the premises aforesaid, I find that there is no substance in the present revision and the same is, therefore, dismissed. Rule is discharged with no order as to costs.

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